

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
February 9, 2017**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:10 a.m. Members present included James N. Clevenger, Chairperson; Priscilla Keith; and Daryl Yost. Office of Inspector General staff present included Lori Torres, Inspector General; Jennifer Cooper, Ethics Director; Stephanie Mullaney, Staff Attorney/Compliance Officer; Tiffany Mulligan, Chief Legal Counsel; and Cindy Scruggs, Director of Administration.

Others present were Rachel Russell, Deputy Director/Ethics Officer, Indiana State Department of Health; Deanna Smith, Staff Attorney, Indiana State Department of Health; Adrienne Brune, Staff Attorney, Indiana State Department of Health; Hilari Sautbine, Staff Attorney, Indiana State Department of Health; Mark Tidd, Ethics Officer, Indiana Department of Transportation; Michelle Walker, former Department of Education employee; Lee Ann Kwiatkowski, Chief of Staff, Department of Education; Marsha Bugalla, General Counsel/Ethics Officer, Department of Education; Amy Marsh, former Department of Workforce Development employee; Steve Braun, Commissioner, Department of Workforce Development; Jeffrey Gill, General Counsel/Ethics Officer, Department of Workforce Development; Cyndi Carrasco, Deputy General Counsel/Ethics Officer, Governor’s Office; Jennifer Walthall, Secretary, Family & Social Services Administration; Allison Taylor, General Counsel/Ethics Officer, Family & Social Services Administration; Chelsea Smith, Ethics Officer/ALJ; Department of Homeland Security; Sylvia Watson, General Counsel/Ethics Officer, Indiana State Library; Joan Blackwell, Chief of Staff/Ethics Officer, Attorney General’s Office; Sarah Kamhi, Deputy General Counsel, Indiana Economic Development Corporation; Mark Wuellner, Deputy Chief of Staff/Gneral Counsel, Lt. Governor’s Office; and Adam VanOsdol, Indiana Education Insight.

II. Adoption of Agenda and Approval of Minutes

Chairman Clevenger noted that the Inspector General report would be moved out of executive session and into the last session of the public meeting. Commissioner Yost moved to adopt the agenda and Commissioner Keith seconded the motion which passed (3-0). Commissioner Keith moved to approve the minutes of the January 12, 2017 Commission meeting and Commissioner Yost seconded the motion which passed (3-0).

III. Consideration of Post-Employment Waiver

**For Michelle Walker, Former Director of Assessment
Presented by Lee Ann Kwiatkowski, Chief of Staff; and
Marsha Bugalla, General Counsel & Ethics Officer
Indiana Department of Education**

Ms. Bugalla and Dr. Kwiatkowski presented a post-employment waiver for Michelle Walker, the former Director of Assessment, Indiana Department of Education whose position was eliminated during the transition to Dr. Jennifer McCormick's administration. Ms. Bugalla stated that Dr. McCormick had approved this waiver and provided a summary of the waiver highlighting IDOE's reasons for presenting the waiver to the Commission. Ms. Bugalla, Dr. Kwiatkowski, and Ms. Walker answered the Commission members' questions on the matter.

After the Commission discussed the matter, Commissioner Yost moved to approve the Post-Employment waiver. Commissioner Keith seconded the motion which passed (3-0).

IV. Consideration of Post-Employment Waiver

**For Amy Marsh, former employee
Presented by Steve Braun, Commissioner; and
Jeff Gill, General Counsel & Ethics Officer
Indiana Department of Workforce Development**

Commissioner Braun and Mr. Gill provided a summary of the waiver highlighting DWD's reasons for presenting the waiver to the Commission. Commissioner Braun explained the DWD's reasons for granting the waiver and Mr. Gill explained how the waiver was in the public interest and answered the Commission's questions about the waiver.

After the Commission discussed the matter, Commissioner Keith moved to approve the Post-Employment waiver. Commissioner Yost seconded the motion which passed (3-0).

V. Consideration of Limited Personal Use of State Property Policy

**Presented by Cyndi Carrasco, Deputy General Counsel & Ethics Officer,
Office of Indiana Governor Eric Holcomb; and
Mark Wuellner, Deputy Chief of Staff & General Counsel
Office of Indiana Lt. Governor Suzanne Crouch**

Ms. Carrasco and Mr. Wuellner presented a revised Limited Personal Use of State Property Policy for the Offices of the Governor, First Lady, and Lt. Governor. The policy was revised because of the transition in administration and removes the previous policy's language allowing the former First Lady to conduct some personal business in the Governor's Residence.

After Ms. Carrasco answered the Commission's questions Commissioner Keith moved to approve the policy. Commissioner Yost seconded the motion which passed (3-0).

VI. Request for Formal Advisory Opinion

17-I-3 Dr. Jennifer Walthall, Secretary
Allison Taylor, General Counsel & Ethics Officer
Indiana Family and Social Services Administration

Ms. Taylor stated that she was requesting an advisory opinion on behalf of Dr. Jennifer Walthall, the newly appointed Secretary of FSSA to ensure that Dr. Walthall's outside employment at Riley Hospital for Children ("Riley") would be permissible under the Code of Ethics.

Dr. Walthall joins FSSA after serving as the Deputy Health Commissioner for the Indiana State Department of Health for two and a half years. She was also the Division Chief at Riley for 4 years, and prior to that she served as the Residency Program Director of Riley for 9 years. She has over 16 years of clinical experience and maintains Board Certification in Pediatrics and Emergency Medicine. She also has a Master's Degree in Public Health.

Dr. Walthall would like to work a weekly shift in the pediatric emergency room at Riley while she is serving as the Secretary of FSSA in order to maintain her clinical certification and continue her personal and professional mission of providing compassionate services to children.

Dr. Walthall proposes to work a weekly shift in the Riley emergency room on a consistent but alternating schedule. For example, during week one she will work in the emergency room from 10 a.m. to 7 p.m. on Tuesday. During week two, she will work from 3 p.m. to midnight on Tuesday. During week three she would be back to a shift from 10 a.m. to 7 p.m. on Tuesday, and the pattern continues. This schedule will allow her to spend a few hours at the FSSA office on the days where her shift begins at 10 a.m., but will allow her to spend almost a full day at the FSSA office on the Tuesdays when her shift starts at 3 p.m. As an employee of the State, Dr. Walthall will pay for her own medical malpractice insurance, licensing fees and certifications.

Riley first opened in 1924 and is the State's first hospital exclusively for children. Riley is nationally-ranked and has Indiana's only Level I Pediatric Trauma Center, Pediatric Burn Unit and Pediatric Dialysis Program. In her consulting role with Riley, Dr. Walthall will not serve in a supervisory or leadership role with the hospital. Instead, Dr. Walthall will serve as an independent contractor to Riley and will be paid by Riley on an hourly basis. Dr. Walthall will not charge patients nor will she bill insurance. The very nature of emergency room medicine is that the patients come to you, and the receiving physicians treat patients without regard to insurance, income or even the ability to pay. Ms. Taylor believes this fact in and of itself solidifies her opinion that Dr. Walthall's work in the emergency room is not inherently incompatible, and does not conflict in any relevant way, with her duties as Secretary.

Dr. Walthall understands and agrees that she may not use State time to work at Riley or see patients. She anticipates easily meeting the 37.5 hour work-week requirement despite time spent seeing patients. During emergency room shifts she will be available remotely by phone and email. The Riley campus is in very close proximity to the FSSA office.

FSSA has no direct contracts with Riley. However, Riley is a related entity of Indiana University (IU) Health and FSSA's various divisions have about 29 contracts with IU Health and related

entities. One grant from FSSA's Division of Mental Health and Addiction to IU totals \$339,000 over a two-year period and is for the operation of Riley's dual diagnosis clinic for adolescents. Ms. Taylor points out that these 29 contracts are all at the division level, meaning that the Division Directors are the owners of the contracts – Dr. Walthall will not be in a position to sign or negotiate these contracts. In order to avoid violating the State's ethics laws and to avoid a potential conflict under IC 35-44.1-1-4, Riley has agreed that neither State funds from these contracts nor funds from FSSA facilitated programs like Medicaid, will be used to pay Dr. Walthall's consulting fees. Ms. Taylor believes that this separation, coupled with the fact that Dr. Walthall has no leadership role with Riley and is simply staffing the emergency room once a week, should ensure that there is not even the appearance that Dr. Walthall is deriving a profit from, or has pecuniary interest in, any of the IU Health contracts with the State.

In terms of her daily duties at FSSA, IC 12-8-1.5-10.5 designates the Office of FSSA Secretary as the single state agency to administer the Medicaid program. In this role, the FSSA Secretary may make decisions affecting Medicaid providers; however, most if not all decisions of the Secretary or her office makes regarding Medicaid providers would apply to all providers (or groups of providers) uniformly. For example, any changes FSSA makes to the Medicaid fee schedule would apply to all Medicaid providers equally. Furthermore, although Riley serves Medicaid patients, it has little, if any, direct interaction with FSSA. Accordingly, it is unlikely that FSSA would make a decision that would have a unique impact on Riley or I U Health or related entities. However, if the situation presented itself, FSSA will screen Dr. Walthall from participating in any such decision by providing the FSSA Deputy Secretary full authority to handle such matters independently. Dr. Walthall successfully utilized a similar screen during her work with the Indiana State Department of Health.

On February 1, 2017, Dr. Walthall filed a Conflict of Interests – Decisions and Voting Ethics Disclosure Statement with the Office of Inspector General describing the potential conflict of interests she would have if she were to participate in votes or decisions regarding Medicaid providers. The Statement also describes the screen Ms. Taylor has established to ensure that Dr. Walthall will not participate in any Medicaid decisions that would uniquely affect Riley. If any such matters come before the Office of the FSSA Secretary, they will be handled independently by the FSSA Deputy Secretary.

Ms. Taylor believes that Dr. Walthall's outside employment would not violate any agency rule or regulation. Ms. Taylor's opinion is that this screen and the confirmation that IU will not pay Dr. Walthall with any state funds, should provide the proper assurance that her outside employment will not affect the integrity of her services to the State.

The advisory opinion stated the following analysis:

A. Outside employment

An outside employment or professional activity opportunity creates a conflict of interests under IC 4-2-6-5.5 if it results in the employee: 1) receiving compensation of substantial value if the responsibilities of the employment are inherently incompatible with the responsibilities of public office or require the employee's recusal from matters so central

or critical to the performance of her official duties that her ability to perform them would be materially impaired; 2) disclosing confidential information that was gained in the course of state employment; or 3) using or attempting to use her official position to secure unwarranted privileges or exemptions of substantial value that are not properly available to similarly situated individuals outside state government.

Based on the information provided by Ms. Taylor, Dr. Walthall's employment at Riley would not create a conflict of interests for her under this provision. Specifically, Ms. Taylor provides that Dr. Walthall would be practicing emergency pediatric medicine once a week, during a well-defined shift for Riley. She would not serve in a supervisory or leadership role with the hospital. She would be an independent contractor and will be paid on an hourly basis. According to Ms. Taylor, Dr. Walthall's responsibilities in treating patients during the weekly shift would not conflict with her responsibilities as the Secretary of FSSA, and the Riley shift would not require her to recuse herself from matters that are critical to the performance of her duties as Secretary of FSSA.

Moreover, Ms. Taylor confirmed that Dr. Walthall would not be required to disclose confidential information that she may have access to by virtue of her state employment. Similarly, nothing in the information presented suggests that she would use or attempt to use her state position for any unwarranted privileges or exemptions. Dr. Walthall worked at Riley prior to becoming Secretary of FSSA and will not charge patients or bill insurance for her services.

Accordingly, the Commission finds that Dr. Walthall's outside employment with Riley would not violate IC 4-2-6-5.5.

B. Conflict of interests - decisions and votes

IC 4-2-6-9 (a)(1) prohibits Dr. Walthall from participating in any decision or vote, or matter relating to that decision or vote, if she has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(3) prohibits Dr. Walthall from participating in any decision or vote, or matter relating to that decision or vote, if she or a business organization which employs her has a financial interest in the matter.

Dr. Walthall will be serving as the Secretary of FSSA and will also be employed as an independent contractor by Riley. Riley is a related entity of IU Health. Accordingly, Dr. Walthall would have a potential conflict of interests if she participates in decisions or votes, or matters related to such decisions or votes, in which she, Riley, or IU Health would have a financial interest in the outcome.

Riley does not have any direct contracts with FSSA, but it receives funding from an FSSA contract with IU Health. In addition, IU Health has 20 contracts with FSSA. Ms. Taylor advises that Dr. Walthall is not in a position to negotiate or sign contracts because the contracts are handled at the Division level. Accordingly, it is unlikely she would ever be required to participate in decisions regarding these contracts. Ms. Taylor offered that FSSA would inform the Division leaders to not send any contracts pertaining to Riley or

IU Health to the Secretary in order to ensure that she will not participate in any of these contracts.

In addition, FSSA is the state agency responsible for administering the Medicaid program. Riley and other IU Health-affiliated facilities serve Medicaid patients. Ms. Taylor provided that any decisions that Dr. Walthall would make regarding Medicaid would be broad in scope and would affect all Medicaid providers uniformly. Ms. Taylor does not anticipate that Dr. Walthall would ever be in a position to participate in a decision or vote in which Riley, or IU Health, would have a unique financial interest.

However, to ensure that Dr. Walthall does not participate in any decisions or votes in which Riley or IU Health would have a financial interest, FSSA has developed a screening process whereby any matters in which a decision could uniquely affect Riley, IU Health, or IU Health-related entities would be delegated to the Deputy Secretary. Further, any contracts involving Riley, IU Health or IU Health-related entities and the Office will be assigned to and/or negotiated by the Deputy Secretary.

IC 4-2-6-9(b) requires that an employee who identifies a potential conflict of interests notify their Ethics Officer and Appointing Authority, and seek an advisory opinion from the Commission or file a written disclosure statement. In addition to this request for a formal advisory opinion, Dr. Walthall has filed a Conflict of Interests –Decisions and Voting Ethics Disclosure Statement with the Office of Inspector General. The disclosure statement identifies the potential conflict of interest, describes the screen established by Ms. Taylor and includes her notification to her appointing authority, all in accordance with the requirements in IC 4-2-6-9(b).

The Commission finds that Dr. Walthall would have a potential conflict of interests if she were to participate in decisions or votes, or matters related to such decisions or votes, that would uniquely affect Riley or IU Health. The Commission is satisfied with Dr. Walthall's disclosure of the potential conflict of interests, through the Conflict of Interests –Decisions and Voting Ethics Disclosure Statement filed with the Office of Inspector General, and the screen developed by FSSA to ensure she does not violate this rule.

C. Conflict of interests – contracts

Pursuant to IC 4-2-6-10.5, a state employee may not knowingly have a financial interest in a contract made by an agency. This prohibition however does not apply to an employee that does not participate in or have official responsibility for any of the activities of the contracting agency, provided certain statutory criteria are met. The term "official responsibility" has been interpreted by the Commission as contracting responsibilities.

Ms. Taylor provides that Riley does not have any direct contracts with FSSA, but IU Health has about 29 contracts with FSSA, one of which provides funding to Riley. However, Ms. Taylor has affirmed that Dr. Walthall would not have a financial interest in

any of these contracts or any other state contracts. Specifically, Riley has agreed that neither state funds from any of its contracts nor funds from FSSA facilitated programs like Medicaid, will be used to pay Dr. Walthall's consulting fees. Accordingly, the Commission finds that Dr. Walthall would not have a financial interest in a state contract through her position at Riley and would not be in violation of this rule.

D. Confidential information

Dr. Walthall is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. Similarly, IC 4-2-6-6 prohibits Dr. Walthall from accepting any compensation from any employment, transaction, or investment which is entered into or made as a result of material information of a confidential nature. The term "person" is defined in IC 4-2-6-1(a)(13) to encompass both an individual and a corporation, such as Riley. In addition, the definition of "information of a confidential nature" is set forth in IC 4-2-6-1(a)(12).

To the extent Dr. Walthall is exposed to or has access to such confidential information in her position as Secretary of FSSA, she would be prohibited not only from divulging that information but from ever using it to benefit any person, including Riley, in any manner.

E. Use of state property and Ghost employment

42 IAC 1-5-12 prohibits Dr. Walthall from using state property for any purpose other than for official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. Likewise, 42 IAC 1-5-13 prohibits Dr. Walthall from engaging in, or directing others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

To the extent that Dr. Walthall observes these provisions regarding her employment with Riley such outside professional activity would not violate these ethics laws.

The Commission found that Dr. Walthall's outside employment with Riley Hospital for Children would not create conflict of interests for her under the Code of Ethics.

Commissioner Keith moved to approve the Commission's findings and Commissioner Yost seconded the motion which passed (3-0).

VII. Director's Report

Ms. Cooper stated that OIG staff issued 21 informal advisory opinions since the last Commission meeting and that the majority of these opinions dealt with the ethics rules on conflict of economic interests, outside employment, post-employment, gifts, and confidential information. Ms. Cooper advised that the Financial Disclosure Statement filing period ended on February 1, 2017 and the OIG staff was in the process of logging all of the disclosures and ensuring compliance with the requirement to file. She estimated that the OIG had received 2000 Financial Disclosure Statements during the filing period. Ms. Cooper also stated that OIG staff was tracking several bills currently being considered by the General Assembly; she will provide an update on any relevant bills that move forward at the next Commission meeting.

VIII. Inspector General's Report

Inspector General Torres thanked the Commission for allowing her to make minor changes to the Commission meetings, including the new meeting room. Inspector Torres reported that criminal charges had been filed recently based on OIG investigators' work. The OIG investigated a case involving service provider vendors for the Indiana Department of Child Services. Based on the OIG's investigation and probable cause affidavits presented to the Lake County Prosecutor, criminal charges were filed against six individuals.

IV. Adjournment

Commissioner Yost moved to adjourn the public meeting of the State Ethics Commission and Commissioner Keith seconded the motion which passed (3-0).

The Public Meeting adjourned at 11:15 a.m.

MEMORANDUM

TO: All Attorney General's Office officers, employees and special state appointees
FROM: Curtis T. Hill, *Attorney General*
DATE: March 6, 2017
SUBJECT: Policy on Limited Personal Use of State Property/Resources

I. PURPOSE

Indiana Code, Section 4-2-6-17, prohibits state officers, employees and special state appointees from using state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the State Ethics Commission.

This policy establishes guidelines for limited personal use of state property/resources by the Office of the Attorney General, including its state officer, employees, and special state appointees. This policy has been approved by the State Ethics Commission as required by law.

II. APPLICABILITY

This policy applies to the state officer, employees, and special state appointees of the Office of the Attorney General. This policy replaces/rescinds any previous limited use policies adopted by the Office of the Attorney General.

III. POLICY STATEMENT

The Attorney General and his respective employees perform a variety of duties for numerous and diverse constituencies, across the entire geography of the State, often in a constant capacity. This makes it inevitable for the state officer and Attorney General office employees, in the course of conducting official state business, to make occasional, non-official use of state property or time that some may construe as outside the scope of the official business of the agency. Such limited, personal use of state property/resources should not be considered a violation of the Indiana Code of Ethics.

Further, in recognition that the agency officer holds a publicly elected office, IC 4-2-7-5 (c) allows for the state officer or (an) individual(s) designated by the state officer to use state resources for the following: (1) to coordinate the state officer's official, personal, and political calendars; (2) to provide transportation and security for (a) the state officer; and (b) any employee or special state appointee who accompanies the state officer; (3) incidental or *de minimis* political communications or activity involving the state officer.

The parameters of permissible use under this policy are as follows:

- A. The use must not interfere with the performance of official duties and work responsibilities;
- B. The use must be infrequent, of short duration and, unless not reasonably practicable, made on the state officer's, employee's or special state appointee's personal time;
- C. The use must not be for the purpose of conducting business related to an outside commercial activity;
- D. The use must not be for an illegal activity;
- E. The use must not be for a political purpose, except as provided for in IC 4-2-7-5(c). A political purpose does not include handling or disposing of unsolicited political communications.

- F. Pursuant to IC 4-2-7-5(c), a state officer or an individual designated by the state officer may use state materials, funds, property, personnel, facilities, or equipment for the following:
 - (1) To coordinate the state officer's official, personal, and political calendars.
 - (2) To provide transportation and security for:
 - (A) the state officer; and
 - (B) any employee or special state appointee who accompanies the state officer.
 - (3) Incidental or *de minimis* political communications or activity involving the state officer.

- G. The use must be in accordance with the current version of the Information Resources Use Agreement ("IRUA"). The restrictions in the IRUA apply to all Information Resources including, but not limited to, state hardware, software, data, information, network, personal computing devices, phones and other information technology;

- H. The use must not violate any other ethics rules or agency policies.

IV. COMPLIANCE

Directors, supervisors, and managers are responsible for monitoring the appropriate use of state property/resources within their areas of supervision and for referring matters for investigation and/or discipline to the Office of Inspector General. State officers, employees and special state appointees who violate this policy are subject to disciplinary action by both the Office of the Attorney General and the Office of Inspector General & State Ethics Commission.

V. LEGAL REFERENCES

42 IAC 1-5-12 Use of State Property
42 IAC 1-5-13 Ghost Employment
IC 4-2-6-17
IC 4-2-7-5

VI. EFFECTIVE DATE

Immediately

VII. ENDING DATE

Upon rescission

APPROVAL



Curtis T. Hill
Attorney General of Indiana

Date



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
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INDIANA
STATE ETHICS COMMISSION
JUN 11 2015
FILED

GREG ZOELLER
INDIANA ATTORNEY GENERAL

TELEPHONE: 317.232.6201
FAX: 317.232.7979

MEMORANDUM

TO: All Attorney General's Office officers, employees and special state appointees
FROM: Gregory F. Zoeller, *Attorney General*
DATE: July 1, 2015
SUBJECT: Policy on Limited Personal Use of State Property/Resources

I. PURPOSE

IC 4-2-6-17, effective July 1, 2015, prohibits state officers, employees and special state appointees from using state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the State Ethics Commission.

This policy establishes guidelines for limited personal use of state property/resources by the Office of the Attorney General, including its state officer, employees, and special state appointees. This policy was approved by the State Ethics Commission on June 11, 2015.

II. APPLICABILITY

This policy applies to the state officer, employees, and special state appointees of the Office of the Attorney General. This policy replaces/rescinds any previous limited use policies adopted by the Office of the Attorney General.

III. POLICY STATEMENT

The Attorney General and his respective employees perform a variety of duties for numerous and diverse constituencies, across the entire geography of the State, often in a constant capacity. This makes it inevitable for the state officer and Attorney General office employees, in the course of conducting official state business, to make occasional, non-official use of state property or time that some may construe as outside the scope of the official business of the agency. Such limited, personal use of state property/resources should not be considered a violation of the Indiana Code of Ethics.

Further, in recognition that the agency officer holds a publicly elected office, IC 4-2-6-17 (c) allows for the state officer or (an) individual(s) designated by the state officer to use state resources for the following: (1) to coordinate the state officer's official, personal, and political calendars; (2) to provide transportation and security for the state officer and any employee or special state appointee who accompanies the state officer; and incidental or de minimus political communications or activity involving the state officer.

The parameters of permissible use under this policy are as follows:

- A. The use must not interfere with the performance of official duties and work responsibilities;
- B. The use must be infrequent, of short duration and, unless not reasonably practical, made on the state officer's, employee's or special state appointee's personal time;
- C. The use must not be for the purpose of conducting business related to an outside commercial activity;
- D. The use must not be for an illegal activity;
- E. The use must not be for a political purpose, except as provided for in IC 4-2-6-17(c). A political purpose does not include handling or disposing of unsolicited political communications. Pursuant to IC 4-2-6-17(c), a state officer or an individual designated by the state officer may use state materials, funds, property, personnel, facilities, or equipment for the following:
 - (1) To coordinate the state officer's official, personal, and political calendars.

- (2) To provide transportation and security for:
 - (A) the state officer; and
 - (B) any employee or special state appointee who accompanies the state officer.
- (3) Incidental or de minimus political communications or activity involving the state officer.
- F. The use must be in accordance with the current version of the Information Resources Use Agreement ("IRUA"). The restrictions in the IRUA apply to all Information Resources including, but not limited to, state hardware, software, data, information, network, personal computing devices, phones and other information technology;
- G. The use must not violate any other ethics rules or agency policies.

IV. COMPLIANCE

Directors, supervisors, and managers are responsible for monitoring the appropriate use of state property/resources within their areas of supervision and for referring matters for investigation and/or discipline to the Office of Inspector General. State officers, employees and special state appointees who violate this policy are subject to disciplinary action by both the Office of the Attorney General and the Office of Inspector General & State Ethics Commission.

V. LEGAL REFERENCES

42 IAC 1-5-12 Use of State Property
42 IAC 1-5-13 Ghost Employment
IC 4-2-6-17
IC 4-2-7-5

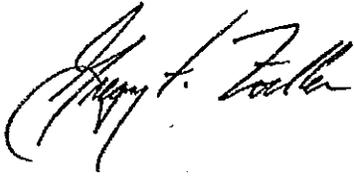
VI. EFFECTIVE DATE

Immediately

VII. ENDING DATE

Upon rescission

APPROVAL



Gregory F. Zoeller
Attorney General of Indiana

June 3, 2015

Date



Eric Holcomb, Governor
STATE OF INDIANA

Indiana Department of Homeland Security
302 West Washington Street
Indianapolis, IN 46204 INDIANA
STATE ETHICS COMMISSION

MAR 29 2017

Date: March 29, 2017
To: Jennifer Cooper
Ethics Director, Indiana Office of Inspector General
From: Chelsea E. Smith
Ethics Officer, Indiana Department of Homeland Security
Re: **Request for Formal Advisory Opinion**

FILED

The Indiana Department of Homeland Security (IDHS), on behalf of Stanley Frank, requests a Formal Advisory Opinion from the State Ethics Commission (Commission) addressing outside employment and conflicts of interests considerations for Mr. Frank.

Mr. Frank currently serves as the Southwest Emergency Medical Services (EMS) District Coordinator within the State Fire Marshal's Office for District 7 and District 10. Prior to joining IDHS, Mr. Frank served as the Owen County Coroner, as well as the EMS Division Chief for the Riley Fire Department (Riley Fire) in Vigo County, Indiana. Mr. Frank is requesting a Formal Advisory Opinion from the Commission because he would like to work part-time as a paramedic for Riley Fire. He anticipates that, if his outside employment is approved, he would only work one or two 12 hour shifts per month.

In his current role as the Southwest EMS District Manager, Mr. Frank is responsible for overseeing ambulance service, the EMS training center, and hospital certifications. As stated above, Riley Fire is located in Vigo County, Indiana. This is one of the 20 counties within Mr. Frank's purview and Riley Fire is one of nearly 200 providers that Mr. Frank is responsible for overseeing. Due to the fact that Riley Fire falls within one of Mr. Frank's districts, he would be responsible for conducting an investigation in the event that Riley Fire was cited for violations related to its ambulance service.

Based on the information provided above, Mr. Frank requests that the Commission provide a Formal Advisory Opinion addressing the following questions:

1. Would Mr. Frank's prospective outside employment as a paramedic for Riley Fire violate the Indiana Code of Ethics?
2. If so, would establishing a formal screen resolve the conflict?
3. In the alternative, would Mr. Frank be permitted under the Indiana Code of Ethics to work as a part-time paramedic for an EMS provider that falls outside of his districts?

Please do not hesitate to contact me if you have any questions or concerns regarding this request. Thank you for your time and consideration in this matter.

Best regards,

Chelsea E. Smith

Cooper, Jennifer

From: Smith, Chelsea
Sent: Monday, April 03, 2017 1:33 PM
To: Cooper, Jennifer
Subject: Fw: Request for Formal Advisory Opinion

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Jen,

I have corresponded with Mr. Frank regarding your questions and thought it might be easier to include the email chain, so I have included that below.

Based on the information Mr. Frank has provided, Riley Fire does not receive any funding through IDHS and he is not involved in any decisions in his role as an EMS District Manager that relate to funding. His duties that might impact Riley Fire are routine ambulance compliance inspections, investigations into complaints and reports of violations, and renewal of provider certifications, which is done every two years.

We have not put together a screening agreement yet, but will be happy to do so prior to the Commission meeting, if you think that is appropriate. The agreement would require one of the other four EMS District Managers to step in and handle any matter that arises relating to Riley Fire and would remove Mr. Frank from being involved in any way. I will need to meet with his supervisors to put together something more specific when I return from vacation, but that is the general idea.

I hope this answers your questions. Please feel free to reach out if you need additional information from us.

Thank you!

Chelsea

From: Frank, Stanley
Sent: Monday, April 3, 2017 1:13 PM
To: Smith, Chelsea
Subject: Re: Request for Formal Advisory Opinion

I'm not sure how to make it clear.. anything related to those codes and rules are my oversight.. I enforce the codes that are encompassed within the ic codes.

Stan Frank

EMS District Manager
Office of Emergency Medical Service
Indiana State Fire Marshal's Office
Indiana Department of Homeland Security
Office: 317-234-4481
Cell: 317-508-0181
Fax: 317-233-0497

April 3, 2017

Mr. James Clevenger, Chairman
Indiana State Ethics Commission
315 West Ohio Street, Room 104
Indianapolis, IN 46202

Subject: Waiver of post-employment for Ben Kemp

Dear Mr. Clevenger:

As the Superintendent of Public Instruction, I am writing to you to express my support and approval of the Indiana Department of Education's (IDOE) waiver of post-employment restrictions for Ben Kemp's proposed employment with Data Recognition Corporation.

I regret that I am unable to appear in person to present the waiver. Unfortunately, I have scheduling conflicts involving previously scheduled meetings and legislative activities. When I became aware of these scheduling conflicts, I asked the IDOE's Chief of Staff, LeeAnn Kwiatkowski, and the IDOE's General Counsel, Marsha Bugalla, to attend the Commission meeting on my behalf. I understand that I.C. 4-2-6-11(g) requires the state officer or appointing authority authorizing the waiver to present it to the Commission, and I greatly appreciate your granting my request for this alternative arrangement in advance of the April 13th meeting.

I fully support and approve this waiver as Mr. Kemp's activities will exclusively be outside Indiana.

Thank you for your consideration of this matter

Sincerely,

A handwritten signature in black ink, appearing to read "J. McCormick", written in a cursive style.

Dr. Jennifer McCormick
Superintendent of Public Instruction

cc: Indiana Office of Inspector General
Marsha Bugalla, IDOE Ethics Officer



Dr. Jennifer McCormick
Superintendent of Public Instruction

DEPARTMENT OF EDUCATION

Working Together for Student Success

INDIANA
STATE ETHICS COMMISSION

April 3, 2017

APR 04 2017

FILED

Jennifer Cooper
State Ethics Director
Office of Inspector General
315 W Ohio Room 104
Indianapolis, IN 46202

Dear Jennifer:

Please see the attached Post Employment Waiver Request for Ben Kemp, signed by Dr. McCormick. The Department would like this request to be on the agenda at the April 13, 2017 Indiana Ethics Commission meeting. Please contact me if you have any further questions or concerns.

Thank You,

A handwritten signature in black ink that reads "Marsha Bugalla".

Marsha Bugalla
General Counsel
Indiana Department of Education

IC 4-2-6-11**Post-employment waiver**

As the Appointing Authority of, Indiana Department of Education, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Ben Kemp in his post-employment with Data Recognition Corporation.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

- A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of
(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker. (Please provide a brief description of the specific particular matter(s) to which this waiver applies below):

- B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Mr. Kemp's prior job responsibilities involved WIDA program implementation. The employee implemented existing policies, rules, and contracts, but was not involved in developing the policies, rules, or contracts that govern the WIDA program. (WIDA is the State's English Language Proficiency Assessment.)

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Mr. Kemp's new duties will be that of a Senior Science Assessment Specialist, developing items and forms for assessment contracts from states and school districts outside of Indiana.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

Mr. Kemp will have no contact with the Indiana Department of Education in his new position.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

The prospective employment would be beneficial to other states around the country which are engaging in assessment development activities. The experience and expertise gained while employed at the Indiana Department of Education will allow for enhanced development and support of their assessment tasks.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

Mr. Kemp would endure significant economic hardship if the request for waiver is denied. Mr. Kemp is the primary source of household income due to his wife's current full-time enrollment in an accelerated nursing school program.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.


Dr. Jennifer McCormick

3/30/17
DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).


Marsha Bugalla

3-30-17
DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY	
Approved by State Ethics Commission	
_____	_____
James Clevenger, Chair, State Ethics Commission	Date

315 West Ohio Street, Room 104
Indianapolis, IN 46202
OR
Email scanned copy to: info@ig.in.gov

Upon receipt you will be contacted with details regarding the presentation of this waiver to the State Ethics Commission.



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room N730
Indianapolis, Indiana 46204

PHONE: (317) 232-5219
FAX: (317) 233-1481

Eric Holcomb, Governor
Joseph McGuinness, Commissioner

INDIANA
STATE ETHICS COMMISSION

APR 04 2017

FILED

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Indiana Department of Transportation, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Mark A. Albers, P.E. in his post-employment with VS Engineering.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of

(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker.
(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Some of the following information is supported by the employee's personnel file or my knowledge of his current INDOT duties, and the remainder is based solely upon information the employee has provided to me in connection with the process of considering this waiver. The employee's prior job is more particularly described below in this answer.

As Program Funds Manager for INDOT's Crawfordsville District since June, 2016, Mark's position has no substantial decision-making authority over policies, rules, or contracts. Prior to June, 2016, Mark also served as INDOT's Consultant Services Manager and in this role, he supervised the Contract Engineer and certain Project Managers for this District who negotiated and administered professional services contracts.

Mark sought an informal opinion (attached) from the Inspector General's office. This opinion concluded that since (a) Mark supervised INDOT personnel who had engaged in discretionary administration of one or more contracts with VS Engineering (Mark's prospective new employer) and (b) Mark had made certain funding adjustments on or before June, 2016 that affected such contracts, Mark would be subject to the one-year cooling off period.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Based solely upon the information provided to me by Mark, and contingent on the approval of this waiver, Mark has accepted the position of Chief Transportation Engineer and as a Project Manager for VS Engineering. Mark indicated that the Chief Transportation Engineer provides technical for civil transportation projects, quality assurance/quality control reviews throughout the plan development process, mentoring of young professionals and client relations. Mark indicated that the Project Manager would serve as team lead to the project development of assigned projects to include oversight of all the services required to deliver the project as required. Mark's new position apparently oversees the man-hours utilized, project budget and administers the client/consultant contract for each assignment, and also prepares letters of interest for proposal requests from state or other public agencies.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

According to Mark, VS Engineering provides professional engineering services to INDOT for transportation infrastructure projects in need of repair, rehabilitation or replacement. As such, Mark will have on-going involvement with INDOT's Capital Program Management and Technical Engineering Support Services personnel. Managing project development requires regular communication and coordination with the assigned project manager and other project team members. At times, INDOT's Technical Engineering Support Services provides a work product to the consultant for them to complete their work. Evaluations of the consultant delivered work product are provided as project milestones are completed.

It is my understanding that VS Engineering will screen Mark from having any involvement in any of the company's current contracts with INDOT's Crawfordsville District. However, VS Engineering may intend to assign Mark to work on other current INDOT contracts in the other five (5) INDOT Districts.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

It is in the public's interest and beneficial to the state and other public agencies having Mark's extensive engineering experience (he has been a licensed Professional Civil Engineer for 25 years) available to provide professional engineering performance and guidance for state and local public works projects. Additionally, Mark's position with his prospective employer would apply his substantial INDOT experience to provide a better product to the state and public agencies. It is also in the public's interest to continue to receive a return on the investment made in Mark's professional development during his more than a decade working at INDOT.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

As a registered Civil Engineer and a member of the INDOT supervisory staff, many outside employment opportunities for Mark would have to undergo ethics scrutiny and some would be prohibited. Failure to approve this opportunity, which I believe had no connection with his past involvement in INDOT-VS Engineering contracts or relationships, would severely limit Mark's opportunities outside INDOT.

Further, Mark is nearing retirement and failure to approve this opportunity will materially and adversely impact his family's standard of living throughout his retirement years.

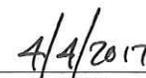
C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Joseph McGuinness, Commissioner



DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Mark J. Tidd, Ethics Officer



DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY Approved by State Ethics Commission	
_____ James Clevenger, Chair, State Ethics Commission	_____ Date

Tidd, Mark

From: Mulligan, Tiffany M
Sent: Thursday, March 02, 2017 11:51 AM
To: Albers, Mark
Cc: Tidd, Mark
Subject: RE: Ethics Informal Advisory Opinion; Albers; INDOT; Post-Employment

Mark,

Thank you for your follow up email and for the clarification you provided.

I reviewed your comments carefully; however, the information you provided does not change my analysis. I am still concerned that the State Ethics Commission may consider your involvement with the funding adjustments on VS contracts and with supervising the staff (project managers and district contract engineers) that requested services and worked with the contract consultants under assignment #10 of the On-Call contract as administration of the contract.

I recommend you seek a formal advisory opinion from the State Ethics Commission on this opportunity or seek a post-employment waiver from the INDOT Commissioner. As noted below, you could either seek a formal advisory opinion from the Commission or ask the INDOT Commissioner to present a post-employment waiver to the Commission at their next meeting, which is on Thursday, March 16th. If you decide to go this route, you will need to submit your request by Monday, March 6th. If you have questions regarding either process, please let me know.

Thank you –

Tiffany

Tiffany Mulligan
Chief Legal Counsel
Office of Inspector General/State Ethics Commission
315 West Ohio Street, Room 104
Indianapolis, IN 46202
tmulligan@ig.in.gov
Phone: (317) 232-0708
Fax: (317) 232-0707

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From: Albers, Mark
Sent: Wednesday, March 01, 2017 4:41 PM
To: Mulligan, Tiffany M <TMulligan@ig.IN.gov>
Cc: Tidd, Mark <MTidd1@indot.IN.gov>
Subject: RE: Ethics Informal Advisory Opinion; Albers; INDOT; Post-Employment

Tidd, Mark

From: Mulligan, Tiffany M
Sent: Wednesday, March 01, 2017 11:52 AM
To: Albers, Mark
Cc: Tidd, Mark
Subject: Ethics Informal Advisory Opinion; Albers; INDOT; Post-Employment

Mark,

Thank you for contacting the Office of Inspector General and for providing me with additional information. You write that you currently work as the Program Funds Manager with the Indiana Department of Transportation (INDOT) in INDOT's Crawfordsville District. In this role you provide project programming and program funding oversight. Prior to serving in your current role, you served as the Consultant Services Manager from October 2014 to June 2016 and as the Consultant Services Section Manager/Program Funds Manager from March 2014 to October 2015. The Consultant Services Section Manager performed several duties including: assigning Project Managers to projects; coordinating with the Project Manager assigned to a project on the scope of services and estimated cost for the services; determining the consultant services assignment capacity needed for project development; and determining the contract type, services and the fee capacity to advertise Requests for Proposals (RFPs).

You explain that you have been offered a position with VS Engineering, Inc. (VS), a professional services engineering consulting firm doing contractual business with INDOT for projects in the Crawfordsville District. If you take the position, you would serve as Chief Engineer and Project Manager. The Chief Engineer provides technical engineering expertise on projects, including providing quality control/quality assurance checks, and helps ensure customer service to their clients. As Project Manager, you would provide team management leadership for assigned projects to ensure the approved scope of services is delivered within the contractual time frame for the agreed to fees for those services. You note that if you go to work for VS, you are not planning to be involved on any current work in the Crawfordsville District.

You explain that INDOT's Capital Program Management Division uses two types of consultant services contracts: Project Specific and On-Call. You explain that from the time you served as the Consultant Services Manager at INDOT, VS had one On-Call contract and twelve Project Specific contracts assigned to the Crawfordsville district.

You note that your only involvement with projects involving VS entailed program and project level planning or funding adjustments in the State Project Management System (SPMS), once fees were determined. Annual program planning involved working with the entire inventory of approved projects and relevant INDOT stakeholders to determine what projects to include in a construction contract and when the contract can be ready for public bid. Project level planning entailed assigning the Project Manager, helping identify required services, helping identify resource type (in-house or consultant) for those services and ensuring the appropriate funding is allocated to the project. Both the program planning and project planning is completed before INDOT selects a consultant.

With regard to project funding, you explain that you were responsible for entering the approved initial budget amounts into SPMS based on a project's estimated costs. For funding adjustments, you explain that when a Project Manager (or higher authority for excessive amounts) requested a change in funds on a project, you updated the project funding in SPMS for the changed amounts. It's my understanding that your job included managing the project managers and contract engineers as your direct reports.

You write that you were not involved in the consultant selection process for any RFP advertised where INDOT selected VS. You explain that all of the VS Project Specific contracts were assigned to a Central Office Contract Engineer to request fees for the determined services and to negotiate those fees. The one On-Call contract administered by the Crawfordsville District had ten work orders. The first nine were completed prior to you starting with INDOT. The tenth had a purchase order issued in December of 2014, and the District Contract Engineer completed all tasks associated with this assignment. You explain that the District Contract Engineer reported to you; however, you were not involved in requesting the services for this assignment or negotiating the fee. You note that this contract closed on June 6, 2015, and no new assignments can be given.

You contacted our office because you would like to know whether any of the post-employment restrictions apply to you. Your inquiry primarily invokes consideration of 42 IAC 1-5-14 (IC 4-2-6-11), which is the post-employment rule. I included all relevant rules and definitions at the end of this opinion for your reference.

This rule consists of two separate limitations: a "cooling off" period and a particular matter restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents you from accepting employment: 1) as a lobbyist, 2) from an employer with whom you engaged in the negotiation or administration of a contract on behalf of any state agency and were in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration, or 3) from an employer for whom you made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary, until the lapse of 365 days from when you leave state employment. In addition, you are prohibited altogether from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence you in your official capacity as a state employee. The post-employment rule's cooling off requirement also contains an exception that applies if (a) the employee has not negotiated or administered any contracts in the two years before the beginning of employment negotiations with a new employer and (b) the contract(s) that the employee negotiated or administered before the two years preceding the beginning of employment negotiations is no longer active.

Regarding subsection 1), your prospective position with VS likely would not require you to lobby the executive branch. However, I do suggest reviewing IDOA's [Executive Branch Lobbying Manual](#) to learn about the types of interactions with members of the executive branch that are considered executive branch lobbying. To the extent that your intended employment with VS would not require you to serve as an executive branch lobbyist during the cooling off period, this restriction would not apply.

It does not appear that subsection 3) applies to your prospective opportunity with VS, as nothing in the information you provided indicates that you made a regulatory or licensing decision that affected VS or its parent or subsidiary. Furthermore, so long as this position is not offered to you to influence you in your official capacity as a state employee, then this prospective opportunity would not be in violation of the last part of this rule.

However, subsection 2) may apply to your potential employment with VS. You indicate that you were not involved in the consultant selection process for INDOT's contracts with VS, that the Contract Administration Division in Central Office prepared the draft of all contracts with VS, and that the Central Office Contract Engineer negotiated all fees for the Project Specific contracts with VS. As a result, it does not appear that you were involved in the negotiation of INDOT's contracts with VS. However, you were involved in funding adjustments in the SPMS for contracts that involved VS, and the District Contract Engineer, who was your direct report, requested the services and negotiated the fee for the tenth

assignment under VS's On-Call contract. In the past, the State Ethics Commission (Commission) has interpreted administration of a contract broadly; therefore, they may consider your involvement with VS projects as part of the administration of the contract. They may also consider your positions as Consultant Services Manager and Program Funds Manager as a position with discretionary authority over the administration of a contract, especially because you entered funding adjustments into SPMS and your staff made decisions regarding the services and fees for an assignment under VS's On-Call contract. Furthermore, if the Commission finds you administered a contract with VS, it does not appear that the two-year exception to the cooling off period would apply because several of INDOT's contracts with VS are still active and the On-Call contract expired less than two years before your employment negotiations with VS began.

Therefore, based on the information you provided, this opportunity may trigger the one-year cooling off period. You may wish to seek a formal advisory opinion from the Commission to get a public and final determination on this matter. The next Commission meeting for which you can request advice is Thursday, March 16th, and all requests for a formal advisory opinion are due on Monday, March 6th. You can find more information on this process at the following link: <http://www.in.gov/ig/2334.htm>.

You also have the option of seeking a post-employment waiver from your agency's appointing authority. Please note that the waiver would need to be presented to and approved by the Commission at one of their public meetings before you begin employment with VS. The requirements for a waiver are set forth in IC 4-2-6-11(g). I recommend you consult with your agency's ethics officer, Mark Tidd, about the possibility of a waiver. I am happy to answer any additional questions you or Mr. Tidd may have about the waiver process.

In addition to the cooling off period, you are also subject to the post-employment rule's "particular matter" restriction. This restriction prevents you from working on any of the following twelve matters if you personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The term "particular matter" does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application. The particular matter restriction is not limited to 365 days, but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, you would be prohibited from representing or assisting VS, any of its clients, customers or members, as well as any other person in a particular matter that you personally and substantially participated in as a state employee. It appears your work as a state employee may have consisted of contracts and projects. Please bear in mind that you would be prohibited from representing or assisting any person in any contracts or projects or any other particular matter that you personally and substantially participated in as a state employee. You can, however, work on new matters. If you have any other questions regarding your work after reviewing the twelve matters listed above, feel free to follow up with our office.

Because you are still employed by the State, you should also keep in mind 42 IAC 1-5-6 (IC 4-2-6-9), which pertains to conflicts of interest; decisions and voting. This rule prohibits you, as a state employee, from participating in any decisions or votes, or any matter related to those decisions or votes, if you have knowledge that any of a certain subset of persons has a financial interest in the outcome of the matter, including yourself and any person or organization with whom you are negotiating or have an arrangement concerning prospective employment. For purposes of this rule, "financial interest" is

defined in IC 4-2-6-1(a)(11). Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote. The Commission has determined that employment negotiations begin when there is a back and forth exchange. Since you indicated that you have been offered a position, it appears that there has been a back and forth exchange between yourself and VS. Therefore, you must ensure that you do not participate in decisions or votes on matters in which VS could have a financial interest, and you must follow the steps prescribed in IC 4-2-6-9(b)(1) or (b)(2) to avoid violating this rule should a potential conflict of interest arise during the remainder of your employment at INDOT.

Finally, please be aware of IC 4-2-6-6, which prohibits you from accepting any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature. So long as working for VS does not result from information of a confidential nature, any such post-employment would not violate IC 4-2-6-6.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Ethics Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Tiffany Mulligan

IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(5) "Business relationship" includes the following:

(A) Dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

(i) a pecuniary interest in a contract or purchase with the agency; or

(ii) a license or permit requiring the exercise of judgment or discretion by the agency.

(B) The relationship a lobbyist has with an agency.

(C) The relationship an unregistered lobbyist has with an agency.

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the

common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

4-2-7-1

Definitions

Sec. 1. The following definitions apply throughout this chapter:

... (5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.

IC 4-2-6-6

Present or former state officers, employees, and special state appointees; compensation resulting from confidential information

Sec. 6. No state officer or employee, former state officer or employee, special state appointee, or former special state appointee shall accept any compensation from any employment, transaction, or investment which was entered into or made as a result of material information of a confidential nature.

42 IAC 1-5-6 Conflicts of interest; decisions and voting

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state officer, employee, or special state appointee.

(2) A member of the immediate family of the state officer, employee, or special state appointee.

(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.

(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-11

One year restriction on certain employment or representation; advisory opinion; exceptions; waivers; disclosure statements; restrictions on inspector general seeking state office

Sec. 11. (a) As used in this section, "particular matter" means any of the following:

(1) An application.

(2) A business transaction.

(3) A claim.

(4) A contract.

(5) A determination.

(6) An enforcement proceeding.

(7) An investigation.

(8) A judicial proceeding.

(9) A lawsuit.

(10) A license.

(11) An economic development project.

(12) A public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(b) A former state officer, employee, or special state appointee may not accept employment or receive compensation:

- (1) as a lobbyist;
- (2) from an employer if the former state officer, employee, or special state appointee was:
 - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and
 - (B) in a position to make a discretionary decision affecting the:
 - (i) outcome of the negotiation; or
 - (ii) nature of the administration; or
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;
before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of the individual's duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the commission certifying that:

- (1) employment of;
- (2) consultation by;
- (3) representation by; or
- (4) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

(f) Subsection (b) does not apply to the following:

- (1) A special state appointee who serves only as a member of an advisory body.
- (2) A former state officer, employee, or special state appointee who has:
 - (A) not negotiated or administered any contracts with that employer in the two (2) years before the beginning of employment or consulting negotiations with that employer; and
 - (B) any contract that:
 - (i) the former state officer, employee, or special state appointee may have negotiated or administered before the two (2) years preceding the beginning of employment or consulting negotiations; and
 - (ii) is no longer active.

(g) An employee's or a special state appointee's state officer or appointing authority may waive application of subsection (b) or (c) in individual cases when consistent with the public interest. A waiver must satisfy all of the following:

- (1) The waiver must be signed by an employee's or a special state appointee's:

(A) state officer or appointing authority authorizing the waiver; and

(B) agency ethics officer attesting to form.

(2) The waiver must include the following information:

(A) Whether the employee's prior job duties involved substantial decision making authority over policies, rules, or contracts.

(B) The nature of the duties to be performed by the employee for the prospective employer.

(C) Whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee.

(D) Whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest.

(E) The extent of economic hardship to the employee if the request for a waiver is denied.

(3) The waiver must be filed with and presented to the commission by the state officer or appointing authority authorizing the waiver.

(4) The waiver must be limited to an employee or a special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation of subsection (b) or (c).

The commission may conduct an administrative review of a waiver and approve a waiver only if the commission is satisfied that the information provided under subdivision (2) is specifically and satisfactorily articulated. The inspector general may adopt rules under IC 4-22-2 to establish criteria for post employment waivers.

(h) Subsection (b) applies, subject to waiver under subsection (g), to a former state officer, employee, or special state appointee who:

(1) made decisions as an administrative law judge; or

(2) presided over information gathering or order drafting proceedings;

that directly applied to the employer or to a parent or subsidiary of the employer in a material manner.

(i) A former state officer, employee, or special state appointee who forms a sole proprietorship or a professional practice and engages in a business relationship with an entity that would otherwise violate this section must file a disclosure statement with the commission not later than one hundred eighty (180) days after separation from state service. The disclosure must:

(1) be signed by the former state officer, employee, or special state appointee;

(2) certify that the former state officer, employee, or special state appointee is not an employee of the entity; and

(3) state in detail the treatment of taxes, insurance, and any other benefits between the entity and the former state officer, employee, or state appointee.

(j) The inspector general may not seek a state elected office before the elapse of at least three hundred sixty-five (365) days after leaving the inspector general position.

Tiffany Mulligan

Chief Legal Counsel

Office of Inspector General/State Ethics Commission

315 West Ohio Street, Room 104

Indianapolis, IN 46202

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INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
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Indianapolis, Indiana 46204

PHONE: (317) 232-5219
FAX: (317) 233-1481

Eric Holcomb, Governor
Joseph McGuinness, Commissioner

INDIANA
STATE ETHICS COMMISSION

APR 04 2017

FILED

IC 4-2-6-11

Post-employment waiver

As the Appointing Authority of the Indiana Department of Transportation, I am filing this waiver of the application of the Code of Ethics' post-employment restriction as it applies to Jason Jones, P.E. in his post-employment with Gauge Telematics, LLC.

I understand that I must file and present this waiver to the State Ethics Commission at their next available meeting. I further understand that this waiver is not final until approved by the State Ethics Commission.

A. This waiver is provided pursuant to IC 4-2-6-11(g) and specifically waives the application of

(Please indicate the specific restriction in 42 IAC 1-5-14 (IC 4-2-6-11) you are waiving):

- IC 4-2-6-11(b)(1): 365 day required "cooling off" period before serving as a lobbyist.
- IC 4-2-6-11(b)(2): 365 day required "cooling off" period before receiving compensation from an employer for whom the state employee or special state appointee was engaged in the negotiation or administration of a contract and was in a position to make a discretionary decision affecting the outcome of such negotiation or administration.
- IC 4-2-6-11(b)(3): 365 day required "cooling off" period before receiving compensation from an employer for which the former state employee or special state appointee made a directly applicable regulatory or licensing decision.
- IC 4-2-6-11(c): Particular matter restriction prohibiting the former state employee or special state appointee from representing or assisting a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state worker.
(Please provide a brief description of the specific particular matter(s) to which this waiver applies below):

B. IC 4-2-6-11(g)(2) requires that an agency's appointing authority, when authorizing a waiver of the application of the post-employment restrictions in IC 4-2-6-11(b)-(c), also include specific information supporting such authorization. Please provide the requested information in the following five (5) sections to fulfill this requirement.

1. Please explain whether the employee's prior job duties involved substantial decision-making authority over policies, rules, or contracts:

Some of the following information is supported by the employee's personnel file or my knowledge of his current INDOT duties, and the remainder is based solely upon information the employee has provided to me in connection with the process of considering this waiver. The employee's prior job involved substantial decision-making authority over policies, rules, or contracts, as more particularly described below.

As the Director of Maintenance Management and District Support, Jason has provided leadership in the areas of highway maintenance operations, which includes the routine maintenance of all pavements, bridges, rights-of-way, drainage, signage, signals, and snow and ice removal on the INDOT roadway network.

In this capacity he sets performance standards, operating policies, establishes performance metrics, and provides engineering guidance for INDOT's 1,500 person in-house maintenance staff, as well as administers an \$80M maintenance work program budget used for highway maintenance materials and small highway maintenance contracts.

Jason sought advice from INDOT's Ethics Officer, who concluded that since (a) Jason provided informal feedback to other INDOT personnel who had engaged in scoring (discretionary negotiation) of a contract with Gauge Telematics (Jason's prospective new employer) and (b) Jason led an INDOT team that worked with Gauge to implement the contract provisions requiring the providing of certain information in formats best utilized by INDOT (discretionary administration, even though INDOT had a Project Manager in charge of INDOT's contribution toward administration of this Department of Administration contract), Jason would be subject to the one-year cooling off period.

2. Please describe the nature of the duties to be performed by the employee for the prospective employer:

Based solely upon the information provided to me by Jason, and contingent on the approval of this waiver, Jason has accepted the position of Operations Manager. Jason indicated that, as Operations Manager, he will be manage all sales and account management personnel, develop and maintain sales forecasts, create operational processes, provide project management for special client projects, assist with company strategy, and maintain client and vendor relationships.

3. Please explain whether the prospective employment is likely to involve substantial contact with the employee's former agency and the extent to which any such contact is likely to involve matters where the agency has the discretion to make decisions based on the work product of the employee:

According to Jason, he will have no involvement with the current contract between Gauge Telematics and the Indiana Department of Administration which has involved INDOT's dump truck fleet. Jason is not aware of any other current contract that Gauge has with any other state agency. If deemed necessary by the State Ethics Commission, Gauge will screen Jason from direct involvement with any other Gauge contract involving INDOT or the State of Indiana for a period of up to one (1) year.

4. Please explain whether the prospective employment may be beneficial to the state or the public, specifically stating how the intended employment is consistent with the public interest:

It is in the public's interest and beneficial to the state and other public agencies having Jason's extensive engineering experience (he has been a licensed Professional Civil Engineer for many years) available to provide professional engineering performance and guidance for state and local public works projects. Additionally, Jason's position with his prospective employer would apply his substantial INDOT experience to provide a better product to the state and other public agencies. It is also in the public's interest to continue to receive a return on the investment made in Jason's professional development during his more than a decade working at INDOT.

5. Please explain the extent of economic hardship to the employee if the request for a waiver is denied:

As a registered Civil Engineer and a member of the INDOT supervisory staff, many outside employment opportunities for Jason would have to undergo ethics scrutiny and some would be prohibited. Failure to approve this opportunity, which I believe had to have no conflict of interest with Jason's current role, or the spirit of the ethics rules, would severely limit Jason's opportunities outside INDOT.

C. Signatures

1. Appointing authority/state officer of agency

By signing below I authorize the waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(A). In addition, I acknowledge that this waiver is limited to an employee or special state appointee who obtains the waiver before engaging in the conduct that would give rise to a violation.



Joseph McGuinness, Commissioner



DATE

2. Ethics Officer of agency

By signing below I attest to the form of this waiver of the above-specified post-employment restrictions pursuant to IC 4-2-6-11(g)(1)(B).



Mark J. Tidd, Ethics Officer



DATE

D. Approval by State Ethics Commission

FOR OFFICE USE ONLY
Approved by State Ethics Commission

James Clevenger, Chair, State Ethics Commission

Date

INDOT PRESENTATION TO STATE ETHICS COMMISSION
ON APRIL 13, 2017 SEEKING FORMAL ADVISORY OPINION
THAT STATE AGENCY HAS DISCRETION TO PAY
ASSOCIATION FEES OF ITS PROFESSIONAL EMPLOYEES

1. INDOT's Written Supporting Materials
2. Letter in Support from Joseph McGuinness, INDOT Commissioner
3. Letter in Support from Brandye Hendrickson, Director of the Indiana State Personnel Department
4. Letter in Support from Dr. Jennifer Walthall, Secretary of the Indiana Family and Social Services Administration
5. Letter in Support from Bruno L. Pigott, Commissioner of the Indiana Department of Environmental Management

Indiana State Ethics Commission
Formal Advisory Opinion, December 2008, No. 08-I-22

Mark Tidd, INDOT Prequalification & Permits Director and Agency Ethics Officer
Britni Saunders, INDOT Director of Talent Management

April 13, 2017

Purpose

- Formal Advisory Opinion, December 2008, No. 08-I-22
 - Background
 - INDOT & SPD position/support
-

INDOT Professional Memberships

- **Metropolitan Indianapolis Board of Realtors (MIBOR)**
 - For: Various INDOT Real Estate Personnel
 - Business Purpose Example:
 - INDOT assists in administrative settlements to property owners, helping Property Management with excess land and easement valuations, and providing early assessments to Project Managers;
 - Paramount for appraising land and building improvements is access to current market data that MIBOR and INDOT's other Bloomington MLS membership provides. This MLS information provides a one page summary of the property transaction details including the price, date sold, size and other factors.
 - With MIBOR and Bloomington MLS, INDOT can quickly obtain comparable sales data (sold properties) for most of the counties in Indiana. This saves the State time and money by resolving owner valuation disputes timely through the administrative settlement process, before the ensuing and expensive condemnation proceedings in INDOT Legal.
 - This is also the case in providing Project Managers with early project cost estimates to determine appropriate funding for INDOT highway projects that number approximately 500 to 700 per year. INDOT Property Management benefits too with prompt valuations of excess land and so forth.
 - Reliable market data is arguably the most critical factor in accomplishing real estate responsibilities in a timely manner.
- **National Association of State Aviation Officials (NASAO)**
 - For: INDOT Aviation Manager
 - Business Purpose Example:
 - Since 1931, NASAO has been the recognized voice of state government aviation agencies in Washington, D.C. NASAO's membership is strictly limited to the states, U.S. Territories and Commonwealths. NASAO is a consensus driven association of aviation professionals who serve the public interest and is a trusted source of accurate information.
 - Members of Congress, USDOT Secretary, FAA Administrator, NTSB Chairman, TSA Administrator and Senior Administration officials are accessible to NASAO members. NASAO has briefed the White House, USDOT, FAA, Dept. of Homeland Security, Dept. of Treasury, Dept. of Commerce, Dept. of Agriculture, the Office of Management and Budget and the Governmental Accountability Office.
 - NASAO played a key role in the passing of the two most important infrastructure investment bills in U.S. aviation history, AIR-21 and VISION-100. Today, NASAO continues to work with congress to ensure adequate Airport Improvement Program funding, General Aviation airport investment and state apportionment levels.
 - Many associations are in Washington promoting the various facets of the aviation community, but only NASAO speaks for the states. NASAO effectively opposes unnecessary or inefficient regulation/rulemaking. 4. SECURITY; before DHS or TSA were established, NASAO had an Aviation Security Committee which made recommendations to the federal government in the wake of 9/11. NASAO was the co-author of TSA's Guidelines for General Aviation Airports
 - NASAO was an advocate for establishing the Airport Cooperative Research Program. Today, NASAO holds a position on the oversight board of ACRP which conducts key research and has been federally funded at \$15M annually.
 - NASAO members receive a weekly members-only newsletter that provides a Washington update, a review of NASAO activities, a look at other aviation associations, and a round-up of state aviation issues and actions. NASAO member states and FAA also have monthly telecons to discuss state issues.
 - NASAO has a close relationship with the federal agencies engaged with aviation regulation.
 - INDOT also receives significant discounts to attend the annual conference and free attendance at the aviation legislative briefing.

INDOT Professional Memberships

• NAFA Fleet Management Association

- For: Various INDOT Fleet Leaders
 - Business Purpose Example:
 - Provides a required Boot Camp to obtain nationally recognized and industry preferred certification in fleet management
 - Provides industry standards for various fleet management responsibilities
 - Access to these tools and resources has saved an enormous amount of time, skill, money and subsequently allowed appropriate workloads, accountability, and productivity to be calculated

• National Institute Of Governmental Purchasing (NIGP)

- For: Accounting personnel from various Indiana State agencies
 - Business Purpose Example:
 - Access to the design and implementation of effective accounting performance metrics
 - Strategies to combat common government-centered accounting issues (processes, policies, systems, vendors, software, etc.)
 - INDOT directly gained information regarding a plan to collect county reports preventing State time, energy, and resources from being spent collecting this information independently
-

INDOT Professional Memberships

- **Public Relations Society of America (PRSA)**

- For: Various Communications personnel
 - Business Purpose Example:
 - INDOT's Communication personnel frequently are positioned to relay information through strategic methods including social media, media relations, presentations, government relations, and web content production.
 - PRSA provides INDOT's communicators opportunities to share knowledge, explore different disciplines, build professional networks, exchange ideas and tactics, and leverage propriety research and statistics.
 - PRSA offers members:
 - Free online and on-demand professional development training as well as discounted pricing on seminars, boot camps, and conferences on topics like social media and crisis communication.
 - Subscriptions to national public relations publications
 - Access to case study and research databases.
 - Networking and professional development opportunities targeted to specific interest areas and geographic areas.
 - PRSA conferences and continuing education, including the industry recognized Accreditation in Public Relations

- **National Institute Of Governmental Purchasing (NIGP)**

- For: Various Accounting personnel from State agencies
 - Business Purpose Example:
 - Access to the design and implementation of effective accounting performance metrics
 - Strategies to combat common government-centered accounting issues (processes, policies, systems, vendors, software, etc.)
 - INDOT directly gained information regarding a plan to collect county reports preventing State time, energy, and resources from being spent collecting this information independently



INDIANA DEPARTMENT OF TRANSPORTATION

100 North Senate Avenue
Room Nxxx
Indianapolis, Indiana 46204

Eric Holcomb, Governor
Joe McGuinness, Commissioner

April 3, 2017

To: Indiana State Ethics Commission
Re: Formal Advisory Opinion, December 2008, No. 08-I-22

To Whom It May Concern,

I would like to express my support of INDOT's participation and materials presented regarding the use of state funds to pay for professional memberships. INDOT's business operation benefits greatly in a number of ways due to several specific professional memberships, either directly or indirectly. It is our request that our agency be permitted to utilize state funds to maintain these business benefits.

Thank you for your consideration,

Joe McGuinness
Commissioner, Indiana Department of Transportation



**Indiana State
Personnel Department**

Brandye L. Hendrickson
State Personnel Director

Eric J. Holcomb
Governor

402 W. Washington St., Rm. W161 | Indianapolis, Indiana 46204-2261 | Telephone: (317) 232-0200

April 3, 2017

To: Indiana State Ethics Commission
Re: Formal Advisory Opinion, December 2008, No. 08-I-22

To Whom It May Concern,

I would like to express my support of INDOT's participation and materials presented regarding the use of state funds to pay for professional memberships. As a former INDOT Commissioner, I observed both direct and indirect benefits to daily business operations in a number of ways due to employees maintaining certain professional memberships. In my new capacity as Director of the Indiana State Personnel Department, I see the potential for this to occur in other agencies. It is our request that state agencies be permitted to utilize state funds to maintain such business benefits.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Brandye Hendrickson".

Brandye Hendrickson, Director
Indiana State Personnel Department



Eric Holcomb, Governor
State of Indiana

Indiana Family and Social Services Administration
402 W. WASHINGTON STREET, P.O. BOX 7083
INDIANAPOLIS, IN 46207-7083

Dr. Jennifer Walthall, Secretary

April 3, 2017

Mr. James Clevenger, Chair
Indiana State Ethics Commission
315 West Ohio Street, Room 104
Indianapolis, IN 46202

Re: Letter in support of allowing agencies to pay the association fees of its professional employees

Dear Chairman Clevenger and members of the Commission,

I appreciate that you are revisiting the Commission's 2008 opinion on the ability of agencies to pay their attorneys' professional association fees. As a physician, I know firsthand the value that comes from professional associations – I have found the affiliation to these organizations to be an incredibly useful tool, bearing certain resources, training, and access to experts that would otherwise not be available to me.

In discussing with FSSA's General Counsel, I understand legal professional associations bring to bear the same opportunity for our attorneys – an opportunity for them to access the latest industry information, access judicial trends that may impact our agency, and other recourses and tools to help them develop as a professional. FSSA's attorneys practice in very complex areas of law, from Medicaid law, to Title VI and ADA compliance, to mental health and substance use disorder issues, and beyond. It would be a tremendous asset if we were permitted as an agency to determine those instances where paying the annual professional association fees of our attorneys (or other professionals) would benefit the agency and thus be considered official state business. If permitted, this change will afford our agencies one more tool to ensure our professional teams are equipped with the information they need to represent us well.

Thank you again for your time. We appreciate the Commission's consideration of this important issue.

Sincerely,


Jennifer Walthall, MD, MPH





INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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Eric J. Holcomb
Governor

Bruno L. Pigott
Commissioner

March 29, 2017

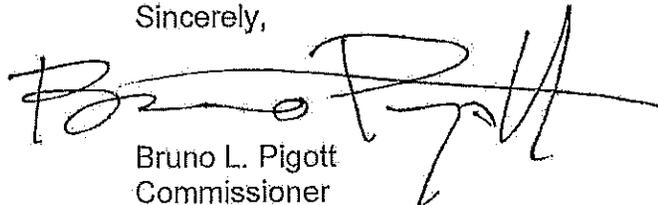
Ms. Lori Torres
Office of the Inspector General
Indiana State Ethics Commission

Re: Support for allowing the payment of association fees by state agencies

Dear Ms. Torres:

I am writing to express my support for allowing state agencies to be able to determine whether the payment of association fees for certain employees would be permissible under the auspices of official state business. While I do not believe such payments should be mandatory, I believe that, in certain instances, an employee's membership in an association may be a necessary part of his or her duties as a state employee and such membership could prove valuable to both the employee and the agency he or she serves. The individual agency is best equipped to assess each situation and determine the value to the agency and the state. As such, I support allowing agencies to make that determination.

Sincerely,



Bruno L. Pigott
Commissioner

INDIANA
STATE ETHICS COMMISSION

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

Policy Memorandum: State Ethics Commission Electronic Meetings Policy

Date: April 13, 2017

By: Jennifer Cooper, State Ethics Director

Purpose:

The Indiana State Ethics Commission (the “Commission”) Electronic Meetings Policy (the “Policy”) is intended to comply with all relevant law and provide the framework for participation in and the conduct of public meetings where means of electronic communication are used by members of the Commission not physically in attendance.

The Commission has had the ability to utilize telephone conference calls, speaker phone, and other communications technology to conduct Commission business when necessary due to emergency situations. *See* **40 IAC 2-5-3 Meetings by telephone and other communications media technology.**

In 2012, **IC 5-14-1.5-3.6 Electronic communications by certain government bodies**, took effect. This statute authorizes members of the governing body of a public agency to participate in meetings of the governing body by means of electronic communication. The statute authorizes such electronic participation if, (1) the meeting complies with all other requirements of the Indiana Open Door Law and (2) a majority of the governing body adopts a policy regarding the use of electronic communication to participate in a meeting.

Policy:

Physical attendance of Commissioners is always preferable to participation by electronic means of communication; however, the Commission acknowledges there are circumstances under which physical attendance is not possible or is impractical. This policy will address those times in which physical attendance is overly burdensome or not possible.

- I. **Minimum Physical Participation.** At any meeting of the Commission, at least two (2) commissioners must be physically present at the place where the meeting is conducted.
- II. **Treatment of Members Participating by Electronic Means.** A commissioner who participates in a meeting by a permitted electronic means of communications:
 - A. Shall be counted as present at the meeting; and
 - B. May vote at the meeting.

- III. **Quorum.** The commission must still have a quorum, which equates to at least three (3) commissioners in order to transact business of the commission. A commissioner who participated in a meeting by a permitted electronic means of communication shall be counted for purposes of establishing a quorum.
- IV. **Permitted Means of Communication.** A commissioner not physically present at a meeting may participate in the meeting by any electronic means of communication, so long as the electronic communication permits:
 - A. The member;
 - B. All other members participating in the meetings; and
 - C. All members of the public physically present at the place where the meeting is conducted to simultaneously communicate with each other.
- V. **Roll Call Voting.** All votes of the Commission during a meeting where any member participates by means of electronic communication shall be taken by a roll call vote, in which the name of each member of the Commission will be called individually and requested to cast their vote aloud.
- VI. **Limitations.**
 - A. **Prohibition on the use electronic communication for public ethics violation hearings.** The Commission is prohibited from conducting a dispositional hearing on an ethics complaint using electronic communication under IC 4-2-6-4.3. Accordingly all commissioners participating in the hearing must be physically present.
 - B. **Annual minimum physical participation.** Each commissioner must be physically present for at least one (1) of the Commission's meetings per year. Commission members are encouraged to attend all meetings in person.
 - C. **Notice of intent to participate by electronic means.** A commissioner intending to participate by electronic means in a meeting of the Commission shall obtain prior authorization from the Chair of the Commission, and provide notice of such authorization in writing to the State Ethics Director, at least forty-eight (48) hours prior to the time of the Commission meeting, exclusive of weekends and holidays, to allow adequate arrangements to be made.

Legal References: IC 5-14-1.5-3.6; 40 IAC 2-5-3; IC 4-2-6-4.3

Effective Date: This Policy shall be in effect immediately upon approval by the Commission.

Ending Date: This Policy will end upon rescission by vote of the Commission.

Approval: This Policy was approved by vote of the Commission members present at the meeting held on April 13, 2017.

James Clevenger, Chair, State Ethics Commission

Date

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

To: Lori Torres, Inspector General

From: Jennifer Cooper, State Ethics Director

Date: April 6, 2017

Re: Report on Financial Disclosure Statements for 2016

The following is the breakdown of the 2016 Financial Disclosure Statements received since January 1, 2017:

State officers* (IC 4-2-6-8(a)(1):	10
Appointing authorities** (IC 4-2-6-8(a)(2):	84
Other required filers*** (IC 4-2-6-8(a)(4)-(9)):	1828
Total filings:	1922

*includes former Governor, Superintendent of Public Instruction, and Attorney General in addition to current officers

**includes former appointing authorities

***names provided to the OIG by the Indiana Department of Administration, Indiana Public Retirement System, and Indiana Department of Transportation

Communications by OIG regarding filing requirements:

- 1) Courtesy emails sent to all required filers on January 12, 2017
- 2) Courtesy emails sent to Ethics Officers on January 12, 2017
- 3) Courtesy emails sent to Appointing Authorities on January 17, 2017
- 4) First reminder emails sent to all required filers on January 24, 2017
- 5) Second reminder emails sent to all required filers on January 31, 2017

- 6) Courtesy emails sent to required filers who had still had not filed (as of February 28, 2017) on March 3, 2017
- 7) Courtesy emails sent to Human Resources Directors for those required filers who still had not filed (as of March 17, 2017) on March 20, 2017

Conclusion:

As of April 6, 2017, there were three (3) identified required filers (confirmed through the State Personnel Department as current, active employees) who had not filed the Financial Disclosure Statement for the calendar year 2016.